



DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 10

Wage and Hour Division

29 CFR Part 531

RIN 1235-AA21

Tip Regulations Under the Fair Labor Standards Act (FLSA); Partial Withdrawal; Correction

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Final rule; technical correction.

SUMMARY: In this final rule correction, the Department of Labor (Department) revises the DATES section of the final rule published on October 29, 2021 to make a technical correction, clarifying that in addition to 29 CFR 531.56(e) the Department is also withdrawing the revisions to 29 CFR 10.28(b)(2) that published on December 30, 2020.

DATES: This correction is effective December 28, 2021.

FOR FURTHER INFORMATION CONTACT: Amy DeBisschop, Director, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue, NW, Washington, DC 20210; telephone: (202) 693-0406 (this is not a toll-free number). Accessible Format: Copies of this rule correction may be obtained in alternative formats (Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, large print, braille, audiotape, compact disc, or other accessible format), upon request, by calling (202) 693-0675 (this is not a toll-free number). TTY/TDD callers may dial toll-free 1-877-889-5627 to obtain information or request materials in alternative formats.

Questions of interpretation or enforcement of the agency's existing regulations may be directed to the nearest WHD district office. Locate the nearest office by calling the WHD's toll-

free help line at (866) 4US–WAGE ((866) 487-9243) between 8 a.m. and 5 p.m. in your local time zone, or log onto WHD’s website at <https://www.dol.gov/agencies/whd/contact/local-offices> for a nationwide listing of WHD district and area offices.

SUPPLEMENTARY INFORMATION:

The Department of Labor published a final rule in the Federal Register on October 29, 2021 titled Tip Regulations Under the Fair Labor Standards Act (FLSA); Partial Withdrawal, 86 FR 60114. In that final rule, the Department finalized amendments to 29 CFR 10.28(b) and stated its intent to withdraw the 2020 Tip final rule’s revisions to that section: “Withdrawal of the 2020 Tip final rule’s revisions to . . . § 10.28(b) is necessary in order to finalize this rule’s changes to . . . 10.28. Accordingly, the Department finalizes its withdrawal of the dual jobs portions of the 2020 Tip final rule.” 86 FR 60138. As published, however, the final rule contained an omission in the DATES section (86 FR 60114). Although the October 29, 2021 final rule was clear that the Department was finalizing its proposal to withdraw the 2020 Tip final rule amendments to both 29 CFR 531.56(e) and 29 CFR 10.28, the DATES section referred only to the withdrawal of the 2020 Tip final rule’s amendments to § 531.56(e). This technical correction amends the DATES section of the October 29, 2021 final rule to reflect the Department’s intent to also withdraw the 2020 Tip final rule’s amendments to § 10.28. This action makes the necessary corrections in the DATES section of that final rule.

The correction clarifies that, consistent with its statements in the October 29, 2021 final rule, the Department is withdrawing the 2020 revisions in amendatory instructions to both 29 CFR 531.56(e) and 10.28(b)(2). The DATES section contained in the Federal Register at 86 FR 60114 is hereby corrected.

Section 553(b)(3) of the Administrative Procedure Act (APA) provides that an agency is not required to publish a notice of proposed rulemaking and solicit public comments when the agency has good cause to find that doing so would be “‘impracticable, unnecessary, or contrary to the public interest.’” 5 U.S.C. 553(b)(3). The Department finds that good cause exists to

dispense with the notice and public comment procedures for this correction to its regulations, as it concludes that such procedures are unnecessary because this rule is not substantive and merely corrects a technical error in the October 29, 2021 final rule's DATES section. Section 553(d) of the APA also provides that substantive rules should take effect not less than 30 days after the date they are published in the Federal Register unless "otherwise provided by the agency for good cause found[.]" 5 U.S.C. 553(d)(3). Since this rule merely corrects a technical error in the October 29, 2021 final rule's DATES section and does not change the substance of the Department's regulations, the Department finds that it is unnecessary to delay the effective date of the rule. Therefore, it is effective December 28, 2021 (the effective date of the rule being corrected).

The Congressional Review Act (CRA) generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. *See* 5 U.S.C. 801(a)(1)(A)-(B). Notwithstanding this requirement, section 808 of the CRA provides that a rule shall take effect at the time determined by the promulgating agency when the agency for good cause finds that "notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 808(2). As noted above, the Department has found that good cause exists to dispense with notice and public procedure for this final rule, as it concludes that such procedures are unnecessary. Therefore, the Department finds that good cause exists to make this correction to its regulations. *See* 5 U.S.C. 808(2). However, consistent with the CRA, the Department will submit to Congress and the Comptroller General the reports required by the Act. 5 U.S.C. 801(a)(1)(A)-(B).

Federal Register Correction

In Fr. Doc. 2021-23446, at 86 FR 60114 in the issue of Friday, October 29, 2021, on page 60114, in the first column, DATES is corrected to read as follows:

DATES: As of December 28, 2021, the Department is withdrawing the revision of 29 CFR 10.28(b)(2) (in amendatory instruction 2) and 531.56(e) (in amendatory instruction 11) that published on December 30, 2020 at 85 FR 86756; was delayed until April 30, 2021, on February 26, 2021, at 86 FR 11632; and was further delayed until December 31, 2021, on April 29, 2021, at 86 FR 22597. This final rule is effective December 28, 2021.

Signed this 9th day of December, 2021.

Jessica Looman,
Acting Administrator, Wage and Hour Division.

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